

RECEIVED  
MAY 21 2013

LAW OFFICES  
WILLIAMS & CONNOLLY LLP

725 TWELFTH STREET, N.W.

WASHINGTON, D. C. 20005-5901

WILLIAM L. DOFFERMYRE

(202) 434-5839

wdoffermire@wc.com

(202) 434-5000

FAX (202) 434-5029

EDWARD BENNETT WILLIAMS (1920-1988)  
PAUL R. CONNOLLY (1922-1978)

May 13, 2013

U.S. Environmental Protection Agency  
National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566-1667

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I request that you provide all information, documents, records, writings, or other tangible things in any form (including but not limited to electronic records such as electronic mail and other such records not maintained in hard copy form) relating to Beef Products, Inc. (hereinafter "BPI"), including but not limited to all documents relating to the use, release, testing, or monitoring of anhydrous ammonia and/or ammonium hydroxide (hereinafter "ammonia") at any of BPI's facilities.

To assist you in your search for responsive documents, we have attached a complaint filed against BPI in the Northern District of Iowa on April 23, 2013, which references the following incidents at BPI facilities involving the release of ammonia:

1. A release of ammonia gas on or about August 31, 2007 from BPI's Waterloo, Iowa facility. Ex. 1 at ¶ 26.
2. A release of ammonia gas on or about June 8, 2008 from BPI's South Sioux City, Nebraska facility. *Id.* at ¶ 54.
3. A release of ammonia gas on or about January 3, 2010 from BPI's South Sioux City, Nebraska facility. *Id.* at ¶ 55.

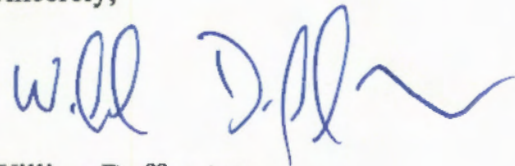
In addition, we have attached an article from the *Sioux City Journal* reporting an ammonia leak at BPI's South Sioux City facility in November 2003. See Ex. 2.

If for any reason you determine that the EPA will not make available any document or portion thereof, please provide prompt notice of such determination. I request that such notice identify clearly the documents withheld and provide an explanation of the bases for any determination to deny disclosure. Please also state the total number of responsive documents USDA is withholding.

If there are any fees charged for searching, reviewing, or copying the records, please supply the records without informing me of the cost if the fees do not exceed \$1000, which I agree to pay. If the fees exceed this amount, please let me know prior to fulfilling my request.

If you have any questions processing this request, you may contact me at the following telephone number: 202-434-5839.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W.D. Doffermyre', with a stylized flourish at the end.

William Doffermyre

# **EXHIBIT 1**



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION

_____	)	
UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	Civil Action No. 6:13-cv-2031
	)	
v.	)	<b>COMPLAINT</b>
	)	
BEEF PRODUCTS, INC.	)	
	)	
Defendant.	)	
_____	)	

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

**NATURE OF ACTION**

1. This is a civil action for civil penalties against Beef Products, Inc. ("BPI") for violations of Section 112(r)(7) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(7), at its meat processing facility in Waterloo, Iowa, and violations of Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9603(a), at BPI's meat processing facility in South Sioux City, Nebraska.

**JURISDICTION, VENUE, AND NOTICE**

2. This Court has jurisdiction over the subject matter of this action and the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; and Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and Section 109(c) of CERCLA, 42 U.S.C. § 9609(c).

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1395(a) and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), because the Defendant resides and does business in this District, and the events or omissions giving rise to the claims alleged herein occurred in this District.

4. Notice of the commencement of this action has been given to the State of Iowa pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

#### **THE DEFENDANT**

5. Defendant BPI is a corporation organized and existing under the laws of the State of Nebraska, and is and/or was doing business in this judicial district.

6. Defendant is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

7. Defendant was the “operator” of a meat processing facility, located at 501 N. Elk Run Rd in Waterloo, Iowa (Waterloo Facility), within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

#### **STATUTORY AND REGULATORY BACKGROUND**

8. The Clean Air Act establishes a regulatory scheme designed to protect and enhance the quality of the nation’s air so as to promote the public health and welfare and the productive capacity of its populations. 42 U.S.C. § 7401(b)(1).

9. The Clean Air Act requires the Administrator of EPA, among other things, to promulgate programs and regulations preventing accidental releases of regulated substances and minimizing the consequences of any such releases that do occur. 42 U.S.C. § 7412(r)(1).



10. Sections 112(r)(3) and (7) of the CAA, 42 U.S.C. § 7412(r)(3) and (7), authorize the Administrator of EPA to, among other things, promulgate a list of regulated substances with threshold quantities, and promulgate regulations applicable to the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity that address release prevention, detection, and correction requirements for these listed regulated substances.

11. EPA has promulgated regulations to implement Section 112(r)(7), codified at 40 C.F.R. Part 68, that require owners and operators of stationary sources that have more than a threshold quantity of a regulated substance in a process to develop and implement a risk management program which must be described in a Risk Management Plan (“RMP”) submitted to EPA and which includes, among other things, a management system, a hazard assessment, and a prevention program.

12. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3, define a “stationary source” as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, are located on one or more contiguous properties, are under the control of the same person, and from which an accidental release may occur.

13. “Process” is defined in 40 C.F.R. § 68.3 to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or any combination of these activities.” “Covered process” means “a process that has a regulated hazardous substance present in more than a threshold quantity as determined under [40 C.F.R.] § 68.115.” 40 C.F.R. § 68.3.

14. The regulations at 40 C.F.R. Part 68 separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3, and set forth specific requirements for owners and operators of stationary sources with processes that fall within the respective programs. A covered process is subject to Program 3 requirements in accordance with 40 C.F.R. § 68.10(d), if the process does not meet one or more of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b), and if either of the following conditions is met: (a) the process is listed in one of the specific North American Industry Classification System Codes found at 40 C.F.R. § 68.10(d)(1); or (b) the process is subject to the United States Occupational Safety and Health Administration (“OSHA”) process safety management standard set forth in 29 C.F.R. § 1910.119.

15. Pursuant to 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to Program 3 prevention requirements must undertake certain tasks including, but not limited to: developing and implementing a management system (as provided in 40 C.F.R. § 68.15); conducting a hazard assessment to determine the area impacted by the release (as provided in 40 C.F.R. §§ 68.20-68.42); implementing prevention requirements (as provided in 40 C.F.R. §§ 68.65-68.87) that include process safety information, operating procedures, training, mechanical integrity, management of change, compliance audits, incident investigations, employee participation, and hot work permits; and developing and implementing an emergency response program (as provided in 40 C.F.R. §§ 68.90-68.95).

16. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the Administrator may commence a civil action against any person that is the owner or operator of an affected source, to obtain civil penalties and a permanent or temporary injunction whenever such person



has violated or is violating any requirement or prohibition of the CAA, including the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, including 40 C.F.R. Part 68.

17. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as modified by the Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, provides that a court may impose civil penalties of up to \$32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

#### **GENERAL ALLEGATIONS**

18. At all times relevant to this Complaint, BPI was the operator of its Waterloo Facility, which handled, stored, and/or used anhydrous ammonia.

19. At the Waterloo Facility, BPI processed a meat product ("lean finely textured beef") from scraps of meat from nearby meat slaughtering facilities. Anhydrous ammonia was used in the Facility's refrigeration systems and as a disinfectant to kill bacteria within the processed meat.

20. In approximately May 2012, BPI shutdown its Waterloo Facility due to the public controversy surrounding BPI's lean finely textured beef.

21. At all times relevant to this Complaint, BPI's Waterloo Facility was a "stationary source" within the meaning of Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.



22. Anhydrous ammonia is listed in 40 C.F.R. § 68.130, Table 1, as a regulated substance, pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a regulatory threshold amount of 10,000 pounds.

23. At all times relevant to this Complaint, BPI used at least 10,000 pounds of anhydrous ammonia in processes at its Waterloo Facility, and in 2008 reported having as much as 92,000 lbs. in use at its Waterloo Facility.

24. At all times relevant to this Complaint, BPI's Waterloo Facility had at least two regulated "processes" within the meaning of 40 C.F.R. § 68.3, including the Facility's ammonia disinfection process and ammonia refrigeration process.

25. The Waterloo Facility's processes were subject to the OSHA process safety management standard, and therefore were classified as Program 3 processes pursuant to 40 C.F.R. § 68.10(d).

26. On or about August 31, 2007, at least 1,017 pounds of anhydrous ammonia was released into the ambient air at the Waterloo Facility.

27. The release of anhydrous ammonia at the Waterloo Facility on August 31, 2007 constituted an "accidental release" within the meaning of Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

28. As a result of this release at the Waterloo Facility, two BPI employees were trapped by the ammonia in a production area of the Facility, unable to exit, and suffered injury from ammonia exposure. One BPI employee later died from her injuries, with the second suffering permanent disability. Several other BPI employees exposed to the ammonia required medical attention at a local hospital.

29. Between August 31, 2007 and June 2009, EPA and the Iowa Department of Occupational Safety Health Administration (“IOSHA”) conducted investigations and inspections of BPI’s Waterloo Facility to investigate the circumstances that led to the release. In December 2008, IOSHA resolved its claims against BPI for violations of Iowa’s occupational safety laws and regulations.

30. As a result of these inspections and investigations, EPA determined that BPI failed to comply with requirements of Section 112(r)(7) of the CAA and 40 C.F.R Part 68.

**FIRST CLAIM FOR RELIEF**  
**CAA Section 112(r)(7) Violations**

31. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

32. BPI failed to identify and document the names or positions responsible for implementing individual requirements of the Waterloo Facility’s risk management program, and also failed to define the lines of authority through an organizational chart or similar document, in violation of 40 C.F.R. § 68.15(c).

33. BPI failed to adequately compile and update written process safety information that described changes to the equipment in its regulated processes, including, but not limited to, piping and instrumentation diagrams, in violation of 40 C.F.R. § 68.65.

34. BPI failed to properly conduct a required process hazard analysis (“PHA”), and did not adequately identify, evaluate, and control the hazards involved in the Waterloo Facility’s regulated processes, including failing to identify the August 31, 2007 accident as an incident which had a likely potential for catastrophic consequences, in violation of 40 C.F.R. § 68.67(a) and (c).



35. BPI failed to adequately and promptly address the findings and recommendations of the Waterloo Facility's PHA review team; failed to assure that the PHA's recommendations were resolved in a timely manner and that resolution was documented; failed to complete actions as soon as possible; and failed to develop a written schedule when the corrective actions were to be completed, in violation of 40 C.F.R. § 68.67(e).

36. BPI failed to adequately implement its own written standard operating procedures for the transfer of ammonia through a dedicated transfer line, and instead transferred ammonia through the pump out line, in violation of 40 C.F.R. § 68.69(a).

37. BPI failed to provide clear instructions for safely conducting activities involved in each covered process, in violation of 40 C.F.R. § 68.69(a). Specifically, BPI failed to:

- a. specify startup and/or shutdown procedures for four subsystems (Thermosyphon Vessel, the High Pressure Receiver, the Intercooler Pump Receiver, and Low Temperature Pump Receiver);
- b. provide procedures for temporary operations for at least one subsystem (High Pressure Receiver);
- c. describe operating limits beyond which the system was not to be operated for at least three subsystems (High Pressure Receiver, Intercooler Pump Receiver, Weiler Blender);
- d. include procedures for line opening and tie in of other piping/lines; and
- e. address emergency operations, including conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators.

38. BPI failed to implement safe work practices to provide for control of hazards during operations, including failing to implement its written Lock Out/Tag Out policy on processes/equipment containing ammonia, in violation of 40 C.F.R. § 68.69(d).

39. BPI failed to implement its written procedures for management of changes to its regulated processes prior to the start of the installation of the Weiler blender and associated piping, in violation of 40 C.F.R. § 68.75.

40. BPI failed to perform a pre-startup safety review for the connection of the Weiler Blender and associated piping into the facility's existing ammonia system, in violation of 40 C.F.R. § 68.77.

41. BPI failed to evaluate the implementation of its full risk management program in its 2006 compliance audit, failed to certify that the 2006 compliance audit was performed in conformity with 40 C.F.R. § 68.79, failed to complete a set of written responses or follow-up actions for each of the 2006 compliance audit recommendations, and failed to promptly document that the identified deficiencies had been corrected, in violation of 40 C.F.R. § 68.79.

42. BPI failed to properly conduct an Incident Investigation into and document the causes of the August 31, 2007 release, in violation of 40 C.F.R. § 68.81.

43. BPI failed to obtain and evaluate information regarding its contractor's safety performance programs, and failed to ensure its contractor's employees were trained and implementing the Waterloo Facility's risk management program (including lockout/tagout and pipe opening), in violation of 40 C.F.R. § 68.87.



44. BPI failed to identify whether it had an Emergency Response Plan, or alternatively, failed to coordinate with local emergency responders as a “non responding” facility, in violation of 40 C.F.R. 68, Subpart E.

45. BPI failed to include in its 2004 RMP’s executive summary a complete five-year accident history that includes prior accidental releases of anhydrous ammonia, in violation of 40 C.F.R. §§ 68.155(d) and 68.42. The 2004 RMP was in effect until 2009.

46. BPI failed to document the date of completion of changes resulting from the 2003 PHA in its 2004 RMP, in violation of 40 C.F.R. § 68.175(e).

47. In its 2004 RMP, BPI failed to identify whether it had a written emergency response plan, in violation of 40 C.F.R. § 68.180 (a)(1).

48. Each of BPI’s above-listed failures to comply with 40 C.F.R. Part 68 constitutes a separate violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

49. BPI is liable for a civil penalty of up \$32,500 per day for each violation of the CAA occurring between March 16, 2004, through January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and EPA inflation adjustment regulations, 40 C.F.R. § 19.

**SECOND CLAIM FOR RELIEF**  
**CERCLA Section 103(a) Violations**

50. Paragraphs 1 through 49 are realleged and incorporated herein by reference.

51. Section 103(a) of CERCLA states that “[a]ny person in charge of . . . an . . . onshore facility shall, as soon as he has knowledge of any release. . . of a hazardous substance in

quantities equal to or greater than those determined pursuant to [section 102 of CERCLA], immediately notify the National Response Center.” 42 U.S.C. § 9603(a).

52. Defendant’s meat processing facility at 360 164 Street, South Sioux City, Nebraska (“South Sioux City Facility”) is an “onshore facility” within the meaning of Section 101(18) of CERCLA, 42 U.S.C. § 9601(18).

53. Anhydrous ammonia is a listed hazardous substance with a reportable quantity (“RQ”) of 100 pounds. 40 C.F.R. § 302.4.

54. On June 8, 2008, BPI released 290 pounds of anhydrous ammonia at its South Sioux Facility. However, Defendant did not immediately notify the National Response Center (NRC) of this reportable release, in violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

55. On January 3, 2010, BPI released 447 pounds of anhydrous ammonia at its South Sioux City Facility. However, again, Defendant did not immediately notify the NRC of this reportable release, in violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

56. Section 109(c) of CERCLA provides as follows:

The President may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than \$25,000 per day for each day during which the violation (or failure or refusal) continues in the case of . . . (1) A violation of the notice requirements of section 9603(a) of this title . . . In the case of a second or subsequent violation (or failure or refusal), the amount of such penalty may be not more than \$75,000 for each day during which the violation (or failure or refusal) continues.

57. The \$25,000 per day civil penalty has been increased up to \$32,500 per day for each violation occurring between March 16, 2004 through January 12, 2009, and the \$75,000 per day penalty for subsequent violations has been increased up to \$107,500 per day for each



violation occurring after January 12, 2009, pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and EPA inflation adjustment regulations, 40 C.F.R. § 19.

58. BPI is liable for a civil penalty up to \$32,500 for its failure to timely notify the NRC on June 8, 2008, and is liable for a penalty up to \$107,500 for its failure to timely notify the NRC on January 3, 2010, of releases of hazardous substances above the reportable quantity.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff United States of America respectfully prays that this Court:

1. Assess civil penalties against BPI for up to the maximum amounts provided in the Clean Air Act and the Comprehensive Environmental Response and Compensation Liability Act cited in this Complaint;
2. Award the United States its costs of this action; and
3. Grant the United States such other relief as the Court deems just and proper and as the public interest and the equities of the case may require.

Dated: April 23, 2013

RESPECTFULLY SUBMITTED,

IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division

/s/Kathryn C. Macdonald  
KATHRYN C. MACDONALD  
Senior Trial Attorney  
United States Department of Justice  
Environment & Natural Resources Division  
Environmental Enforcement Section

P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Telephone: (202) 353-7397  
Email: [kathryn.macdonald@usdoj.gov](mailto:kathryn.macdonald@usdoj.gov)

SEAN R. BERRY  
Acting United States Attorney  
Northern District of Iowa

/s/Jacob A. Schunk  
JACOB A. SCHUNK  
Assistant United States Attorney  
United States Attorney's Office  
111 7<sup>th</sup> Avenue SE, Box 1  
Cedar Rapids, Iowa 52401  
Telephone: (319) 731-4030  
Email: [jacob.schunk@usdoj.gov](mailto:jacob.schunk@usdoj.gov)

OF COUNSEL:

Howard Bunch  
Senior Assistant Regional Counsel  
United States Environmental Protection Agency, Region 7  
11201 Renner Blvd.  
Lenexa, Kansas 66219



# **EXHIBIT 2**



## Ammonia leak forces BPI to shut down



NOVEMBER 17, 2003 12:00 AM • MIKE KOEHLER,  
JOURNAL STAFF WRITER

**SOUTH SIOUX CITY** -- An ammonia leak at the Beef Products Inc. facility in South Sioux City on Monday resulted in a shut-down at the facility.

Rich Jochum, a corporate administrator for BPI, said the leak occurred in a pipe in the plant located at 360 164th St. in South Sioux City. Ammonia could be smelled from the north of the plant. However, there was no

evacuation of the surrounding area, including the nearby IBP inc. plant.

"It occurred in a part of the plant where the refrigeration system is maintained," Jochum said. "It is believed at this time that a valve may have failed and a line leaked. There was no explosion."

The South Sioux City Volunteer Fire Department was called to the scene at 10:53 a.m. The Sioux City Fire Department's HazMat team was also called to the scene. At about 1 p.m., the Sioux City Police Department's mobile command post (a large converted recreational vehicle) arrived on scene to serve as place for the various agencies to meet while working to stop the leak.

The Nebraska Department of Environmental Quality was also present Monday to make sure the ammonia was retrieved and disposed of properly. An EPA team was en route late Monday. The Dakota City Fire Department provided mutual aid personnel and equipment.

Joe Rodriguez, public information officer for the Sioux City Fire Department, said a few thousand pounds of anhydrous ammonia dumped into a mechanical pit area of the plant after the leak. The HazMat team entered the area to pump the leaked ammonia out of the pit. The team consists of eight hazardous material technicians along with the hazardous material assistant chief.

No injuries were reported as a result of the ammonia leak, Jochum said. The first-shift operations had not fully started at the time. First-shift workers were sent home and the second and third shifts were planned to be canceled. The South Sioux City plant employs about 300 people across the three shifts in production.

Fire personnel remained on the scene into the evening hours Monday.

BPI is a leading producer of boneless lean beef trimmings. It is headquartered in Dakota Dunes, with a production facility in South Sioux City. According to the company, BPI has



a capacity of more than 7 million pounds of lean beef trimmings each week at the local facility and others in the United States.

*Mike Koehler may be reached at (712) 293-4219 or [mikekoehler@siouxcityjournal.com](mailto:mikekoehler@siouxcityjournal.com)*